

sions from 1968 to 1971 had shown, make early action impossible. Mr. Bourassa indicated, however, that it would be difficult for his government to agree to this, unless the action also included "constitutional guarantees" for the French language and culture. We agreed that our general acceptance of the plan, in principle, would be subject to more precise exploration and definition, and this was the purpose of the discussions Mr. Robertson had with you on my behalf. I should first report on what developed in the course of those discussions, although the Premiers Mr. Robertson saw later will be generally aware of the way in which our original proposal grew.

It quickly became apparent in Mr. Robertson's discussions that the action for "patriation" and establishment of the amending procedure would be more meaningful for, and more acceptable to, a number of provinces if certain other alterations in our constitutional situation could be established at the same time. Most of these alterations, with the exception of Mr. Bourassa's "constitutional guarantees", were among the things that had been included in the Victoria Charter. They included the provision for consultation with the provinces about appointments to the Supreme Court of Canada and the special handling of cases arising from the civil law of Quebec. They included also the provision concerning the reduction of regional disparities. Certain of the western provinces wanted to have the amending procedure itself modified so that the requirement with regard to consent from the four western provinces would be the same as that for the four eastern provinces. This would mean deletion of the population provision respecting the western provinces that was inserted at Victoria.

The main problem was the definition of the "constitutional guarantees" to which Mr. Bourassa had referred at the outset. Mr. Robertson found that the Premiers he spoke to after the initial discussions with Mr. Bourassa in May had no objection in principle to "constitutional guarantees", although all made it clear that they would want to consider them in detail once they had been worked out with Quebec and reduced to writing.

I will not go into all the difficulties that are presented by the concept of "constitutional guarantees"; they are many and complex. Discussions with Mr. Bourassa's representatives finally led to a formulation that was included in a document sent to him in November, 1975. I am enclosing a copy of the full document herewith. I would draw your attention especially to Parts IV and VI. The formulation of the principal "constitutional guarantee" is Part IV (Article 38). It is buttressed by Part VI (Article 40) and also by the provisions concerning language in Part III.

As I have mentioned, the "constitutional guarantee" was a concept raised by Mr. Bourassa and stated by him to be essential. Articles 38 and 40 attempt to cover the points made by his representatives. Mr. Bourassa knows that my colleagues and I share some concern about the Articles, and he understands that it will fall to him to explain them to his fellow Premiers, in the light of the facts relating to the position of the French language and culture in Canada.

I should emphasize that the document, while it is styled a "Draft Proclamation", was put in this form simply to show with maximum clarity what the result would be if all

the proposals, as they had emerged in the course of Mr. Robertson's consultations, were found acceptable by all governments. It should not be regarded as a specific proposal or draft to which anyone is committed at this stage, since there has not been agreement to the totality of it by anyone. It is rather in the nature of a report on the various ideas, including Mr. Bourassa's "constitutional guarantee", as they developed in the course of the informal discussions from April to November, 1975.

As I stated earlier, most of the "Draft Proclamation" consists of provisions of the Victoria Charter which various Premiers have asked to have included in any action we take. In some cases there are adjustments of the Victoria provisions in order to take into account altered circumstances since 1971 and to benefit by some hind-sight. The new parts of this "report" are the Parts IV and VI to which I have already referred. For ease of reference the main elements are:

- (a) A Preamble. This is entirely new and is simply an idea of the way a total presentation might look.
- (b) Part I is the amending formula contained in the Victoria Charter made applicable to those parts of the Constitution not now amendable in Canada. Thus Articles 49, 50, 51, 52, 56 and 57 of Part IX of the Victoria Charter are included, while Articles 53, 54 and 55, which were designed to replace Articles 91(1) and 92(1) of the British North America Act, are not. The amending formula has not been modified to take account of the views expressed by certain Western Premiers concerning the population qualification for agreement by the Western provinces. I suggest that this might be a matter that, in the first instance, the four Western Premiers might attempt to solve among themselves.
- (c) Part II, which is Part IV of the Victoria Charter concerning the Supreme Court, with a final Article (included in another Part of the Victoria Charter) to protect the status of Judges already appointed.
- (d) Part III, which is a modified version of Part II of the Victoria Charter concerning language rights. It would entrench the constitutional status of the English and French languages federally. It would not affect the provinces, but it would permit a province, under Article 35, to entrench its own provision if it so wished.
- (e) Part IV, which is the "guarantee" designed to protect the French Language and culture against adverse action by the Parliament and Government of Canada.
- (f) Part V, which is essentially Part VII of the Victoria Charter on Regional Disparities. The presentation has been slightly altered but there is no change in substance whatever.
- (g) Part VI, which is a new Article designed to indicate the spirit in which Governments may enter into agreements. In two of the three areas specifically mentioned, major agreements with Quebec have been concluded over the past two years (family allowances and consultation on immigration).

Mr. Bourassa advised me in our conversation on March 5th that the things he considers to be necessary might well go beyond what we, in the federal government, have understood to be involved in the present exercise. In part